TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 167.

THE UNITED STATES, PETITIONER,

vs.

GEORGE RIGGS & CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED DECEMBER 18, 1905.
CERTIORARI AND RETURN FILED JANUARY 13, 1906.

(20018.)

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a United States Circuit Court of Appeals for the Second Circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
GEORGE RIGGS & CO., APPELLEES. } No. 3412.

TRANSCRIPT OF RECORD.

Appeal from the Circuit Court of the United States for the Southern District of New York.

1 *Petition.*

United States Circuit Court for the Southern District of New York.

In the matter of the application of George Riggs & Company, for a review of the decision of the General Appraisers, as to the rates and amount of duties on certain merchandise imported by them per S. S. "Oceanic," date of entry, Mar. 28, 1902, entry No. 58044. } 3412. 4810–H/10786.

To the honorable the Circuit Court of the United States for the Southern District of New York:

Your petitioners, George Riggs & Company, being dissatisfied with a decision made on or about the July 8th, 1903, by the Board of General Appraisers, designated by the Secretary of the Treasury, for and
2 on duty at the port of New York, reviewing and affirming the decision of the collector of the port of New York as to the rate and amount of duty chargeable on certain merchandise imported at said port by your petitioners as above specified, respectfully make application to the court and set forth herein the errors of law and fact complained of, to wit:

The said merchandise consists of a consignment, among other goods, of cotton cloth.

The same was classified and assessed by said collector for duty at the rate of 35 per cent. ad val., and 2 cents in addition under pars. 306 and 307, Sch. I, act of July 24th, 1897. Your petitioner being dissatisfied with the said decision, gave notice to said collector accordingly, within ten days after the ascertainment and liquidation of the duties, as aforesaid, setting forth in reasons for their objection thereto, claiming the said merchandise to be dutiable at the appropriate specific rate according to count under paragraphs 306 and 307, Sch. I, act of July 24th, 1897.

Thereafter the said Board of General Appraisers, proceeding to hear and determine the questions of law and fact involved in said matters, affirmed the decision of the said collector in the premises.

And for the errors of law and fact in the decision of the said Board herein complained of, your petitioner say, the Board of Appraisers erred as matters of law:

1. In holding that the words "of the same description or condition" in paragraph 313 of the tariff act, are manifestly broad enough to include

all elements of description referred to in the previous paragraphs of this schedule, describing cotton cloth of various kinds, weights, and count of threads and value.

3 2. In holding that any other standard of value than that provided in said paragraph 313 could be applied to goods dutiable under said paragraph.

3. In holding that the specific duties provided according to value in said paragraph 313 could be added to maximum ad valorem duties provided for cotton cloth in other paragraphs of said schedule.

4. In holding that the specific duties provided in said paragraph 313 could be added to ad valorem rates provided for in provisos to other paragraphs in said schedule.

5. In not holding that specific rates based upon value as provided in said paragraph 313 should be added only to specific rates provided for goods of same description or condition in paragraphs 306 and 307 of said act.

6. In not sustaining the protest of the importers and overruling the action of the collector.

7. In sustaining the action of the collector and overruling the protest of the importers.

Accordingly, your petitioner respectfully pray the court to order the said Board of General Appraisers to return to the court the record and evidence taken by the said Board, together with a certified statement of the facts involved in the above cases, and of its decision thereon; and thereupon, and upon such further evidence as may be hereafter taken pursuant to the statute in such cases made and provided, to proceed to review said decision and to determine the questions of law and fact involved in the same.

Dated New York, August 6th, 1903.

GEORGE RIGGS & CO., *Petitioner.*
By CURIE, SMITH & MAXWELL,
Attorneys, 22 William Street, New York City.

4 *Order.*

At a stated term of the United States Circuit Court for the Southern District of New York, held at the United States Court and Post-Office building, in the city of New York, on the 6th day of August, 1903.

Present: Hon. E. Henry Lacombe, circuit judge.

In the matter of the application of George Riggs & Company, for a review of the decision of the General Appraisers, as to the rates, &c., of duties on certain merchandise imported by them per S. S. "Oceanic," Mar. 28, 1902.	3412. 4810-H / 10786.

Upon reading and filing the annexed petition of George Riggs & Company, importers of the merchandise therein described, and on motion of Curie, Smith & Maxwell, attorneys for said petitioners,

It is ordered, that the Board of Appraisers at the port of New York, return to this court the record and evidence taken by them in each of the

above entitled matters, together with a certified statement of the facts involved in the case and their decision thereon.

GEORGE C. HOLT, *U. S. Judge.*

5 *Bond.*

Know all men by these presents that I, William H. Northrup, am held and firmly bound unto the United States of America in the sum of fifty dollars to be paid to the said United States of America.

For the payment of which well and truly to be made I bind myself, my heirs, executors, and administrators jointly and severally firmly by these presents. Sealed with my seal, and dated the day of August, in the year of our Lord, one thousand nine hundred and three.

Whereas George Riggs & Company have applied to the Circuit Court of the United States for the Southern District of New York for a review of the questions of law and fact involved in certain decisions of the Board of United States Appraisers made upon the entry of certain merchandise imported by them at per S. S. "Oceanic," March 28th, 1902.

Now, therefore, the condition of this obligation is such that if the above-named George Riggs & Company shall prosecute said proceeding with effect, and pay all damages and costs which shall be awarded against them therein, if they shall fail to make said proceeding good, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

[SEAL.] WILLIAM H. NORTHRUP.

Sealed and delivered and taken and acknowledged, this 5th day of August, 1903, before me.

[SEAL.] JOHN K. MAXWELL,
Notary Public, N. Y. Co.

6 UNITED STATES OF AMERICA,
Southern District of New York, ss:

William H. Northrup, being duly sworn, deposes and says that he does business in the Southern District of New York, in the city of New York; that he is worth the sum of one hundred dollars over and above all his just debts and liabilities.

WILLIAM H. NORTHRUP.

Sworn to this 5th day of August, 1903, before me.

[SEAL.] JOHN K. MAXWELL,
Notary Public, N. Y. Co.

This bond is approved as to form and amount and sufficiency of surety. Dated New York, August , 1903.

GEORGE C. HOLT, *J.*

7 In the Circuit Court of the United States, for the Southern District of New York.

[SEAL.] J. E. DOWSING,
Chief Clerk Board of U. S. General Appraisers.

In the matter of the application of George Riggs & Co., for the review of a decision of the U. S. General Appraisers as to the rate, etc., of duty on certain figured cotton goods imported per S. S. "Oceanic," Mch. 28, 1902.

Suit No. 3412.
Return of the Board of United States General Appraisers to the order of Hon. E. Henry Lamombe, circuit judge.
Dated New York, Oct. 27, 1903.

The Board of United States General Appraisers, sitting at New York, in response to the order of the court in the above matter, make the following return of the record and evidence taken by them in the above matter, and of the facts involved therein, as ascertained by them.

They state that a letter, a copy of which is hereto annexed as Exhibit A, was received from the collector of customs at New York, submitting under the provisions of section 14 of the act of June 10th, 1890, the protest marked "Exhibit B," and described as follows:

Colls. No.	Board No.	Protestants.	Vessel.	Date of Entry.
10786	4810-H	Geo. Riggs & Co.	Oceanic.	Mch. 28/02

On January 28th, April 24th, and June 4th, 1903, witnesses appeared before the Board, produced samples, and were examined in rela-
8 tion to the goods imported. Copies of the testimony are annexed as Exhibits C, D, and E, and the samples are returned under a separate cover marked "Samples in suit No. 3412."

On July 8th, 1903, the Board rendered its decision upon said protest. A copy of the opinion, including the concurring opinion of General Appraisers Somerville and Fischer, is annexed as Exhibit F.

EXHIBIT A.

CUSTOMS SERVICE, OFFICE OF THE COLLECTOR,
New York, N. Y., September 15 '02.

BOARD OF U. S. GEN. APPRAISERS,
Port of New York.

GENTLEMEN: I submit the protest of Geo. Riggs & Co. #10786 * * * against the assessment of duty as made by this office on certain so-called "Cotton cloths and cotton crossovers and other manufactures of cotton," imported by them in the "Oceanic," March 28, 1902.

An inspection of the invoice shows that the goods covered by protest #10786 were retur'ed by the appraiser as "Bleached cotton, 100 150 and 150 200—covered by par. 313." Duty was assessed thereon at the appropriate rates under the provisions of paragraphs Nos. 306 and 307 of the act of July 24, 1897, and as the goods were returned by the appraiser as containing threads other than the ordinary warp and filling threads, the additional duty of two cents per square yard was also assessed thereon, under the provisions of par. 313 of the act of July 24, 1897. Note G. A. 4541, 4808, and 5151.

(Sd.) H. E. ESTERBROOK,
Spec. Dep. Coll.

9 EXHIBIT B.

NEW YORK, *August 22, 1902.*

Hon. COLLECTOR OF CUSTOMS, *New York.*

SIR: We hereby protest against your decision, liquidation and assessment of duties as made by you on our importations below mentioned, consisting of certain cotton cloths contained in the cases or packages marked and numbered as described on the entries and invoices thereof, to which for more certainty of description, reference is hereby had, claiming:

First. That said cloths have not had introduced in the process of weaving, for the purpose of forming a figure, other than ordinary warp and filling threads, and are not therefore dutiable under paragraph 313, Schedule I, act of July 24th, 1897, as assessed, but are dutiable under paragraphs 304 to 309 of said schedule and act, according to weight and value per square yard, and number of threads per square inch, by virtue of the definition in paragraph 310 of said schedule and act.

Second. Goods dutiable under paragraph 313 should pay only the specific rates therein provided, according to their value per square yard in addition to the specific rates provided in paragraphs 304–309 for cotton cloth of the same description or condition, weight, and count of threads to the square inch. The ad valorem provisos of paragraphs 305–309 can not be applied to any goods assessed under paragraph 313, which has an ad valorem classification of its own. The addition of the specific rates imposed by paragraph 313 to the ad valorem rates of 30, 35 or 40 per cent provided in paragraphs 305–309 is therefore unauthorized and
10 illegal; and we give notice that he pay all other higher rates than is claimed above as the legal rate under compulsion, and to obtain possession of our goods. We claim that the duty exacted by you is not the legal duty to which said goods are chargeable, holding you and the Government responsible for all excess of duty exacted by you upon said goods above the legal duty.

EXHIBIT B.

Vessel.	From	Date of entry.	Entry No.	If ware-h'se W. H. bond.	Date of Liquidation.	Marks and numbers of packages.
Oceanic	L'pool ..	Mch. 28, /02	58044	-c-	Aug. 13, /02	G ◇R N Y 2197/2213

and others as per invoices and entries.

Decided July 8, 1903.

GEO. RIGGS & CO.

CURIE, SMITH & MAXWELL,
Attorneys, 20 William street, N. Y.

4810–H.

11 EXHIBIT C.

Before the Board of U. S. General Appraisers.

In the matter of protests, 4810-H, of George Riggs & Company et al., on towels, cotton, and flax.

NEW YORK, N. Y., *January 29, 1903.*

Present: General Appraiser DeVries.

Appearances: H. J. Webster, esq., for the Government. W. Wickham Smith, esq., and John K. Maxwell, esq., for the importers. C. D. Lawrence, stenographer.

4810-H.

W. H. PARKHILL, called as a witness and being duly sworn, testified as follows:

By Mr. SMITH:

Q. Mr. Parkhill, you are an examiner in the fourth division of the Appraiser's office?

A. Yes.

Q. Examiner of cotton goods?

A. I am.

Q. Including countable cotton cloths?

A. I am.

Q. Also countable cotton cloths having threads other than the ordinary warp and weft threads?

A. I am.

Q. You measure such goods?

A. I do.

Q. And are familiar with them?

A. I am.

Q. You are the examiner who passed this invoice, are you not?

A. I am.

12 Q. I call your attention, in case No. 2204, to the first item there, which you have returned at 35 per cent and two cents, and I ask you if you are able to state as to that article the number of square yards to the pound?

A. Well, by taking the invoice statement. It is merely a mathematical problem which I could compute for you.

Q. You passed it and assessed the duty upon it without sending for the case?

A. Yes, sir.

Q. You did it on the invoice statements?

A. Yes, sir.

Q. Your original return was based on the invoice statement?

A. It is.

Q. Pursuing the same course with reference to the invoice as you pursued in your original return you will be able to state the number of square yards to the pound, will you not?

A. I can compute it.

Q. The count of threads in the case is between 150 and 200, is it not?

A. According to the invoice.

Q. The widths of the goods is stated on the invoice?
A. Yes.
Q. 28 inches?
A. Yes.
Q. The number of square yards is stated on the invoice?
A. Yes, sir.
Q. 800?
A. No; the number of square yards in the first item is 223, excuse me; it is 223 according to the invoice.
Q. The goods were bleached, were they not?
A. Yes, according to the invoice.
Q. The price is stated in the invoice, is it not?
A. Yes, sir. It is 5¾ pence, sterling.

13 Q. As soon as you have worked out the number of square yards to the pound you will be able to state what would be the specific rate provided for in the paragraph of those goods, irrespective of the ad valorem proviso at the end of the paragraph, would you not?
A. I think so.
Q. Are you able to state it now?
A. No.
Q. I shall ask you as to each of these articles I am now interrogating you about—to hand a memorandum to the general appraiser, showing the number of square yards to the pound and the specific rate under which those goods would be dutiable under the countable cotton paragraphs if the ad valorem proviso at the end of that paragraph should not be applied to them.

Ignoring paragraph 313, if you will, take the next item—you will find in that case another item—and make the same report on that. The same on the item in case 2206, returned at two cents—first item. And in case 2209, the first item.

Closed.

14 Board of Classification of U. S. General Appraisers.

In the matter of Protest No. 4810-H, of Geo. Riggs & Co. } Cottons figured.

NEW YORK, *April 24, 1903.*

Before General Appraiser De Vries:

Appearances: Albert H. Washburn, esq., counsel for the Treasury Department; Henry J. Webster, esq., assistant counsel for the Treasury Department; W. Wickam Smith, esq., for the importers. Geo. J. Puckhafer, stenographer.

WILLIAM H. PARKKILL, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

By Mr. WASHBURN:

Q. You are an examiner in the fourth division of the Appraiser's department?
A. I am.
Q. You are the examiner of cotton goods?
A. I am.

Q. Do you recall testifying in this case on or about the 29th of January, 1903?

A. I do.

Q. Do you remember being called by Mr. Smith on or about the 29th of January, 1903, in this matter?

15 A. Yes, I do.

Q. I call your attention, Mr. Parkkill, to something which I offer as Exhibit A in this case and will ask you if the goods covered by it represent actual importations into the port of New York?

A. They do.

Q. In the case in suit?

A. No, sir.

Q. Have you, at my request, computed the rate of duty under the countable clauses upon the sample of plain goods here which I shall ask to be designated as Exhibit A, No. 1?

A. Yes.

Q. Have you also, at my request, computed the rate of duty upon the other sample of fancy goods which I shall ask to be designated as Exhibit A, No. 2, in accordance with the method now pursued by the Appraiser's office, and also in accordance with the importer's claim in this case?

A. I have.

Q. Look at this exhibit, which I now hand you, and state if the figures which appear thereon were made by you in response to my request?

A. They were.

Mr. WASHBURN. I now offer in evidence this exhibit here referred to and ask to have it marked "Exhibit A."

Mr. SMITH. I object to its admission on the following grounds:

First. There is no evidence here by whom it was made or from whom imported and for aught the record shows that it was a specially designed and contrived article searched for for the purpose of being offered in evidence in this case, and there is no evidence that it represents any general goods.

16 Second. That it is wholly irrelevant and immaterial what other people are importing and what amount of duty would be paid by them under one theory or another theory. The sole question to be determined in this case being which of two provisions in the law is applicable to the goods, and it being the duty of the Board of General Appraisers to determine the question of classification raised by the protest without respect whether it will increase or lower the rate of duty.

Mr. WASHBURN. I wish to say in reply that the courts take cognizance of the fact that this is a protective tariff. The Board and the courts have done so repeatedly in other cases and have recognized the protective purposes of the law. I submit that it is manifest from a reading of the paragraph in question, to wit, 313, that Congress meant to impose the higher rate of duty on fancy goods, and it is legitimate for the Government to show by various illustrative samples that fact. If the theory which my brother is seeking to read into the law obtains, the effect would be a plain nullification of paragraph 313.

My associate reminds me that in 1890 in the celluloid case and the knit-goods case the courts took cognizance of the fact that the protective

effects of the law were very proper subjects for the consideration of the court. As to whether or not there is any ambiguity in the present act, I submit is a matter of argument. There certainly was in the act of 1883, to which counsel alludes, a plain provision of 15 per cent, or rather
25 per cent for paper and 15 per cent for manufacturers of
17 paper. Whether intentional or not, it was there, but as to the question of the paragraph here there is some doubt as to what Congress may have intended, and I think anything which will aid the Board and the courts in the interpretation of that intent is material and a proper subject to be made part of the record.

Mr. SMITH. I do not wish to be understood in any way contending in the argument I make that it is the duty of the courts or the Board of General Appraisers to ignore the effect of a tariff. The present one, for example, is the result of a protective policy—I do not dispute that—neither do I in the cases illustrated by counsel. I do not happen to recall the celluloid case, but I remember the knit-goods case very well. The question there was whether certain knit manufactured articles, such as hosiery, made up, were dutiable under the provision for wearing apparel made wholly or in part of wool. The decision in the case there incidentally alluded to the fact that the policy of the law was a protective policy, and that Congress would not have been likely to allow made-up wearing apparel to come in at a lower rate than it did piece goods. Now, if the question here were the subject of the protective policy on cotton goods as a class, or any particular class of cotton goods, such as cotton hosiery, or cotton damask, or cotton anything, I should not object to the courts or the Board referring, among other things, if they found any ambiguity, to the protective policy of the law.

I submit that you can not take a particular importation of a par-
18 ticular man and by proving that any construction of the act would make that article pay a lower rate of duty than any one set of goods was to pay, thereby drawing inference as to the intent or meaning of the interpretation of the act. That is what was sought to be done here. I submit that it is incompetent and illegitimate to admit the samples in evidence for the purpose of constructing the tariff law, and if admitted a very dangerous precedent would be established here.

By General Appraise' DE VRIES. The determination of what is the proper rate of duty in this case is a matter of argument. As I understand it, it is intended to illustrate the argument by certain illustrative samples. Illustrative samples are always admitted by the Board to show the different conditions of a particular article. They illustrate the different conditions of that particular sample. Samples in illustration of an argument I do not think are admissible.

Sample not admitted.

Mr. Washburn requests that the case be continued for hearing before the full Board.

Case continued to the regular calendar.

19

EXHIBIT E.

Board of Classification of U. S. General Appraisers.

In the matter of Protest No. 4810–H of Geo. Riggs & Company.

NEW YORK, N. Y., *June 4, 1903.*

Before: General Appraiser Somerville, chairman; General Appraiser Waite, General Appraiser Fischer.

Appearances: Albert H. Washburn, esq., counsel for the Treasury Department. W. Wickam Smith, esq., J. K. Maxwell, esq., appeared for the importers.

WILLIAM H. PARKHILL recalled.

By Mr. WASHBURN:

(After reading testimony of above witness, taken April 24, 1903.)

Q. Referring to the exhibit which you now hold in your hand, Mr. Parkhill, whether or not the goods there attached represent importations into this port?

A. Yes.

(Exhibit referred to offered in evidence.)

Mr. SMITH. I object to any testimony being offered here as to the rate or amount of duty that would or might be paid on certain illustrative samples produced, or to be produced, by the Government and which aforesaid are not the subject of this importation and offered, as is
20 stated, for the purpose of securing a construction of the act, on the ground that the construction of the act is to be passed upon by itself, the language of which is plain and unambiguous and leaves no room for construction; and that the admission of testimony for the purpose of showing what effect the construction of the act, according to its language, would have on other goods is incompetent.

By Judge SOMERVILLE. The Board will allow this testimony for the time being to go on the record and will hereafter consider and rule on the objection after due consideration of such.

(Sample marked "Illustrative Exhibit A, Protest No. 4810–H, June 4, 1903.")

Q. Referring to Illustrative Exhibit A, Mr. Parkhill, will you state under what paragraph the plain goods which are there referred to, Illustrative Exhibit A, No. 1, will be classified?

A. Paragraph 306.

Q. That is one of the countable paragraphs of the cotton schedule?

A. It is.

Q. Will you now state what would be the rate and amount of duty assessable under paragraph 306 upon that Illustrative Exhibit A, No. 1, according to the computation which you have made at my request?

A. The rate would be 35 per cent——

Mr. WASHBURN. One moment.

Q. That is to say, the plain goods which are covered by Illustrative Exhibit A, No. 1, would be assessed under the proviso of paragraph 306?

A. That is right.

21 Q. Now going to the fancy goods which are referred to as Illustrative A, No. 2, I will ask you to state the rate of duty

which they would take under the contention made by the importer in this case.

(Counsel for the importers requests to have computation shown.)

Q. Referring now to Illustrative Exhibit A, No. 2, will you explain the total amount of duty per square yard which would be assessed if specific duties only were imposed at the rate of four and one-half cents per square yard under paragraph 306, plus two cents under paragraph 313?

A. Seven and ninety-five hundredths cents per yard (7.95).

Q. Will you now state the rate and amount of duty which the same goods would be subjected to under the method now pursued by the Appraiser's office?

A. Twenty-three and fifteen hundredths (23.15) cents per yard.

Q. That is to say, it is the rate and amount of duty found by assessing these goods under the provisions of paragraph 306 and adding two cents under the provisions in paragraph 313?

A. That is it; yes.

Q. What would be the duty on the plain?

A. I tried to state that before, but the Government counsel interrupted me. The amount of duty on the plain at 35 per cent is eight and seventy-eight (8.78) cents per yard.

Q. And the amount of duty on this, the fancy?

A. Twenty-three and fifteen (15) (23.15) cents per yard.

By General Appraiser WAITE:

Q. How do you make up the 23.15?

22 A. By computing the article at the present rates provided for in section 306 and plus 313, would make the rates of duty 35 per cent ad valorem, and plus two cents additional, making the total duty on one yard of the fancy article 23.15 cents. The 23.15 represents the duty per lineal yard; deducting the two cents per square yard, the balance is the 35 per cent pro rata on the goods.

Q. How much of the duty is that 35 per cent pro rata?

A. The ad valorem duty on this fabric, referring to the fancy No. 2, in Illustrative Exhibit A, would be about twenty and three-quarter cents (20 3/4) per lineal yard, and you add to that the specific duty, which is about two and three-tenths (2.3) or two and three-eighths (2 3/8) cents, which brings it up to 23.15. I can figure out the rate absolutely correct, if required.

By Mr. WASHBURN:

Q. Now, Mr. Parkhill, I call your attention to an illustrative exhibit, which I shall offer in evidence, and ask you if the goods thereon represent actual importations into the port of New York?

A. Yes.

Q. Represent importations?

A. Yes.

Q. Goods which you frequently pass?

A. Goods I have frequently passed.

(Sample offered in evidence.

Admitted with the same understanding as the previous exhibit. Marked "Illustrative Exhibit B, Protest No. 4810-H, June 4, 1903.")

Q. Under what paragraphs are these goods assessed?

A. 306.

Q. Will you now state the duty imposed upon the plain goods covered by Illustrative Exhibit B, No. 1, under the proviso of paragraph 306?

23 A. The total amount of duty imposed on that sample would be nine and three-tenths (9.3) per meter, nine and three-tenths cents.

Q. Are the fancy goods, referring to Illustrative Exhibit B, No. 2, of the same description as No. 1, except that it has some extra threads other than the ordinary warp and filling threads?

A. Yes.

Q. Will you now state what is the duty per unit upon the fancy goods in this exhibit, imposed at the rate of 35 per cent and two cents per square yard?

A. Sixteen and eighty-one hundredths (16.81) cents per meter.

Q. What is the total amount of duty per meter if specific duties only were imposed, that is to say, specific duties under 306, plus the additional two cents under paragraph 313?

A. Five and ninety-five (5.95) cents per meter.

By Mr. SMITH:

Q. Take that first article you had, this article you referred to as plain cloth.

A. Yes.

Q. What did you say was the duty on that under the proper paragraph of the cotton schedule?

A 8.78 cents per yard.

Q. Now, then, it differs from the pink article only in color and pattern?

A. The additional threads the only difference.

Q. So far as the plain pattern of this pink article is concerned it is the same as the blue?

A. It is.

Q. Both in color and count?

A. Yes.

Q. And weight per square yard?

A. It cannot weigh the same.

Q. If this pink article had no figure on it it would weigh the same as the blue?

24 A. Yes.

Q. Now, then, what did you say was the duty on that pink article if you add the two cents per square yard to the ad valorem rate contained in the paragraph that describes goods according to count?

A. The total amount of duty is 23.15 cents per yard.

Q. So that if the ad valorem rate, plus two cents, is the proper rate, the effect of superimposing this pattern upon this fabric would be to increase the amount of duty nearly three hundred per cent?

A. Not at all.

Q. Why not?

A. For the simple reason I would say that the introduction of these

additional threads takes it into another article of merchandise to such an extent that it enhances its value.

Q. The duty on the plain one is 8.78 cents?

A. Yes, a yard.

Q. The duty on the pink, if you add the two cents, is 23.15?

A. Yes.

Q. What would be the duty on the pink if you add the two cents to the specific rate provided for an article of that weight, count, and number of threads?

A. Seven and ninety-five hundredths (7.95) cents per yard.

Q. You have made a statement here about the ad valorem rate on this article; on what value did you compute the rate?

A. On twelve and one-half (12½) cents per yard.

Q. Where did you get that value from?

A. Pardon me, the goods should pay 35 per cent if they exceeded in value twelve and one-half cents.

25 Q. In order to determine what 35 per cent ad valorem is you have to multiply something by 35 per cent; what was that?

A. The correct market value.

Q. Where did you get that? Was it the value stated in the invoice?

A. Yes; the invoice, which was the correct market value.

Q. What is the count of threads to the square inch of the blue article?

A. Exceeds one hundred but not one hundred and fifty threads.

Q. What is the count of the pink article?

A. Exceeds one hundred but does not exceed one hundred and fifty; that is to say, I presume that counsel means the groundwork of the cloth.

Q. When you say that it does not exceed, that the pink does not exceed one hundred and fifty and does exceed one hundred, you counted only the threads in the groundwork?

A. We have counted the ordinary warp and filling threads as provided for in the tariff.

Q. Have you counted in that count the threads that compose the figures?

A. We have not; they are other than ordinary warp and filling.

Q. If you had, would they have made the count exceed a count of one hundred and fifty to the square inch?

A. No.

Q. Who imported this article?

A. I must respectfully reply to counsel that I must decline to answer that question; we are not permitted to divulge importations; it would violate my oath of office.

Mr. SMITH. I ask the Board to instruct the witness to answer the question.

The Board is of the opinion that it is sufficient to know the
26 values put on these goods by these parties, and declines the request of Mr. Smith.

Mr. SMITH. I move to strike out all the testimony of the witness upon the value of these fabrics on the ground that he has based his statement as to values, as he has already testified, on the invoice values, and that the Board 'as decided that the importation could not be identical for the purpose of verifying the correctness of his statements.

Motion denied.

Q. Did you select the particular samples that you brought here, or were they selected by somebody else?

A. I selected them.

Q. In accordance with any instructions you received?

A. I was requested to select samples.

Q. What was the nature of that request?

A. I was requested to select samples for use in the illustration of these facts.

Q. Of what facts?

A. Showing what the plain material would pay and what the fancy would pay.

Q. Were you requested to obtain samples where the duty on the plain would be greater than the duty on the fancy?

A. I was.

Q. Who gave you these instructions, or who made the request?

A. (To the court:) Pardon me, am I obliged to answer?

(Counsel for the Treasury Department states that he has no objection to witness answering. Witness is instructed to answer.)

A. The counsel for the Government.

Q. It was at his request that you did this?

27 A. It was.

Q. He asked you to see if you could find samples of goods where it would appear by computation that the duty on a plain article was more than the duty on a figured article of the same character and count?

A. Yes.

Q. He asked you to do that?

A. Yes.

Q. How many samples did you find?

A. He asked me to get him up one or two, I forgot how many, not a large quantity, and I did so.

Q. Did you get up any more?

A. I devoted quite a little time to it.

Q. Did you show him any other samples besides those put in evidence?

A. I did not.

By Mr. WASHBURN:

Q. Do you recall the conversation you had with me upon this subject?

A. I think I do.

Q. Did I say to you, if you could, to produce representative samples where plainer goods take a higher rate of duty than on fancy goods of similar character, under the claim made by the importer?

A. You did.

JULY 7, 1903.

SOMERVILLE, General Appraiser:

The Board, after due consideration, is of opinion that the testimony of witness William H. Parkhill, with the accompanying exhibits referred to by him, is relevant to the issues under consideration and properly admissible in evidence. The same is accordingly hereby admitted as a part of this record.

28

(24562—G. A. 5374.) Cotton cloth.

Construction of paragraph 313, tariff act of 1897: The additional duties imposed by paragraph 313, tariff act of 1897, upon cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure, are to be assessed in addition to any duty, whether specific or ad valorem, provided in the other paragraphs covering cotton cloth.

Before the U. S. General Appraisers at New York, July 8, 1903.

In the matter of the protest, 4810 h—10786, of George Riggs & Co., against the decision of the collector of customs at New York, N. Y., as to the rate and amount of duties chargeable on certain merchandise, imported per "Oceanic," and entered March 28, 1902.

Opinion by Waite, General Appraiser.

These protests relate to certain items on the invoices representing cotton cloths in which other than ordinary warp and filling threads have been introduced in the process of weaving to form a figure. The question herein arises under paragraphs 306, 307, and 313 of the tariff act of 1897, which read as follows:

306. Cotton cloth, not bleached, dyed, colored, stained, painted, or printed, exceeding one hundred and not exceeding one hundred and fifty threads to the square inch, counting the warp and filling, and not exceeding four square yards to the pound, one and one-half cents per square yard; exceeding four and not exceeding six square yards to the
29 pound, two cents per square yard; exceeding six and not exceeding eight square yards to the pound, two and one-half cents per square yard; exceeding eight square yards to the pound, two and three-fourths cents per square yard; if bleached, and not exceeding four square yards to the pound, two and one-half cents per square yard; exceeding four and not exceeding six square yards to the pound, three cents per square yard; exceeding six and not exceeding eight square yards to the pound, three and one-half cents per square yard; exceeding eight square yards to the pound, three and three-fourths cents per square yard; if dyed, colored, stained, painted, or printed, and not exceeding four square yards to the pound, three and one-half cents per square yard; exceeding four and not exceeding six square yards to the pound, three and three-fourths cents per square yard; exceeding six and not exceeding eight square yards to the pound, four and one-fourth cents per square yard; exceeding eight square yards to the pound, four and one-half cents per square yard: Provided, That on all cotton cloth exceeding one hundred and not exceeding one hundred and fifty threads to the square inch, counting the warp and filling, not bleached, dyed, colored, stained, painted, or printed, valued at over nine cents per square yard, thirty per centum ad valorem bleached, valued at over eleven cents per square yard, thirty-five per centum ad valorem; dyed, colored, stained, painted, or printed, valued at over twelve and one-half cents per square yard, there shall be levied, collected, and paid a duty of thirty-five per centum ad valorem.

307. Cotton cloth not bleached, dyed, colored, stained, painted, or printed, exceeding one hundred and fifty and not exceeding two hundred threads to the square inch, counting the warp and filling, and
30 not exceeding three and one-half square yards to the pound, two cents per square yard; exceeding three and one-half and not ex-

ceeding four and one-half square yards to the pound, two and three-fourths cents per square yard; exceeding four and one-half and not exceeding six square yards to the pound, three cents per square yard; exceeding six square yards to the pound, three and one-half cents per square yard; if bleached, and not exceeding three and one-half square yards to the pound, two and three-fourths cents per square yard; exceeding three and one-half and not exceeding four and one-half square yards to the pound, three and one-half cents per square yard; exceeding four and one-half and not exceeding six square yards to the pound, four cents per square yard; exceeding six square yards to the pound, four and one-fourth cents per square yard; if dyed, colored, stained, painted, or printed, and not exceeding three and one-half square yards to the pound, four and one-fourth cents per square yard; exceeding three and one-half and not exceeding four and one-half square yards to the pound, four and one-half cents per square yard; exceeding four and one-half and not exceeding six square yards to the pound, four and three-fourths cents per square yard; exceeding six square yards to the pound, five cent' per square yard: Provided, That on all cotton cloth exceeding one hundred and fifty and not exceeding two hundred threads to the square inch, counting the warp and filling, not bleached, dyed, colored, stained, painted, or printed, valued at over ten cents per square yard, thirty-five per centum ad valorem; bleached, valued at over twelve cents per square yard, thirty-five per centum ad valorem; dyed, colored, stained, painted, or printed, valued at over twelve and one-half cents per square yard, there shall be levied, collected, and paid a duty of forty per centum ad valorem.

31 313. Cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure, whether known as lappets or otherwise, and whether unbleached, bleached, dyed, colored, stained, painted, or printed, shall pay, in addition to the duty herein provided for other cotton cloth of the same description, or condition, weight, and count of threads to the square inch, one cent per square yard, if valued at not more than seven cents per square yard, and two cents per square yard if valued at more than seven cents per square yard.

The items in controversy are given in the following table, together with their descriptions as they appear from the record and testimony in the case:

TABLE I.

Item.	Case.	Count of.	Condition.	Value per square yard.
1561	2204	100-150	Colored	14¼ cents or over, 12½ cents
1431	2204	100-150	Bleached	11¼ cents or over, 11 cents.
1	2206	100-150	Colored	13½ cents or over, 12½ cents.
N610	2209	150-200	Bleached	13½ cents or over, 12 cents

32 It will be seen by reference to the above table that the first three items contain between 100 and 150 threads to the square inch, counting the warp and filling; hence they fall under paragraph 306 of the tariff act. The last or fourth item contains from 150 to 200 threads, and therefore falls under paragraph 307.

All the goods were assessed under the provisios to paragraphs 306 and 307 at 35 per centum ad valorem—the first and third items because they are colored and valued at over 12½ cents per square yard, the second because it was bleached and valued at over 11 cents per square yard, and the last one because it was bleached and valued at over 12 cents per square yard. There was also added a specific duty of 2 cents per square yard as provided in paragraph 313.

It is claimed by the importer that the provisos to paragraphs 306 and 307 are not to be considered in ascertaining the rate to which the additional duty is to be added, and, while it is conceded that the additional duty of 2 cents per square yard should be assessed, it is claimed that it should be added to the duty to be ascertained by classifying the goods under the body of the paragraph, the first three under paragraph 306 and the last under paragraph 307. It is further contended that the additional duty provided for by paragraph 313 can not be added to the duty provided for in the provisos to said paragraphs 306 and 307, because it is a specific duty, and the duty there provided for is an ad valorem duty.

We can not so hold. It will be observed that the duties provided for under the bodies of paragraphs 306 and 307 are duties based upon the count of the threads, the weight of the goods, and the further question as to whether they are unbleached, bleached, dyed, colored, stained,
33 painted, or printed; while the duty assessed under the provisos to said paragraphs is made dependent upon the count of threads, the value, and the question as to whether they are unbleached, bleached, dyed, colored, stained, painted, or printed, leaving out the question of the weight of the goods, and adding in lieu thereof the value per square yard. Thus, it will be seen that the classes of goods provided for in the bodies of the paragraphs are entirely separate and distinct from those provided for in the provisos.

It will be conceded that the aim of the law is to fix the duty in proportion to the amount of labor or cost of the commodity. Bearing that in mind, it is hardly conceivable that Congress intended to enact paragraph 313, and by its application reduce the duty provided for in previous paragraphs of the act upon cotton cloths of a high value and grade, which would be the result if the importer's contention is correct. We think it perfectly reasonable that this additional duty should be imposed upon cloth "in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure," whether the original duty be of an ad valorem or specific nature.

It must be remembered that this is an additional duty levied, regardless of the method of levying the original duty, and is imposed upon any cotton cloth included in the dutiable list providing for 1 cent per yard upon all cloth of the value of 7 cents or less, and 2 cents per yard if worth more than 7 cents. Hence we conclude that in order to give full effect to each paragraph of this schedule the additioual duty may be imposed upon the goods either provided for in the bodies or the provisos of paragraphs 306 and 307.

The case of Bensusan v. Murphy (10 Blatch., 530) is cited as a controlling case by the importer.

34 We think there is a clear distinction between the laws and in the application thereof. That was a duty levied "by the gallon"

upon wines, so stipulated and provided in the act. Had there also been a subsequent clause imposing an additional duty to that imposed either upon the wine in the bottles or in the casks, we think it would have been in point, and the interpretation would have been as here given.

The protest is therefore overruled and the collector's decision affirmed.

(Sd.) H. M. SOMERVILLE.
I. F. FISCHER.
B. I. CLASS,
U. S. General Appraiser.

[Concurring opinion of General Appraisers Somerville and Fischer.]

We concur in the conclusion reached in the foregoing opinion that the additional duty assessed on the merchandise under the provisions of paragraph 313 was properly assessed by the collector.

Paragraph 310 of the present tariff act of 1897 provides that—

The term cotton cloth, or cloth, wherever used in the paragraphs of this schedule (meaning Schedule I, cotton manufactures), unless otherwise specially provided for, shall be held to include all woven fabrics of cotton in the piece or otherwise, whether figured, fancy, or plain, the warp and filling threads of which can be counted by unraveling or other practical means.

The goods in question are undoubtedly "cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving or forming a figure," and clearly come within the descriptive terms used in said paragraph 313. The question at issue turns on the meaning of the phrase providing that goods of this description, whether unbleached, bleached, colored, stained, painted, or printed shall pay—

35 "Additional to the duty herein provided for other cotton cloth of the same description or condition, weight, and count of threads to the square inch, one cent per square yard if valued at not more than seven cents per square yard, and two cents per square yard if valued at more than seven cents per square yard."

The words "of the same description or condition" are manifestly broad enough to include all elements of description referred to in the previous paragraphs of this schedule describing cotton cloth of various kinds, weights, and count of threads and value. If any other construction were placed upon this paragraph, it appears from the testimony taken at the hearing that there are some instances in which the duties levied under said paragraph 313 would be less than instead of additional to those levied upon cotton cloths which do not contain other than the ordinary warp and filling threads introduced in the process of weaving to form figures. The purpose of Congress in levying this additional duty would, by such construction, be entirely defeated.

(Sd.) H. M. SOMERVILLE.
I. F. FISCHER.

And for a certified statement of the facts involved in said matter, as ascertained by them, the said Board states that said facts are fully set forth in the decision aforementioned, and that no other facts were ascer-

tained by said Board than such as are shown by said decision and other exhibits hereto attached.

H. M. SOMERVILLE,
I. F. FISCHER,
BYRON S. WAITE,
Board of U. S. General Appraisers.

36 United States Circuit Court, Southern District of New York.

GEORGE RIGGS & COMPANY,
vs.
THE UNITED STATES. } No. 3412.

Appeal from a decision of the Board of United States General Appraisers.

TOWNSEND, Circuit Judge.

The merchandise in question consists of figured cotton cloth, which was assessed for duty under the provisions of paragraph 313 of the tariff act of 1897, which reads as follows:

"313. Cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure, whether known as lappets or otherwise, and whether unbleached, bleached, dyed, colored, stained, painted, or printed, shall pay, in addition to the duty herein provided for other cotton cloth of the same description or condition, weight, and count of threads to the square inch, one cent per square yard if valued at not more than seven cents per square yard, and two cents per square yard if valued at more than seven cents per square yard."

The collector made the assessment subject to the duties imposed by said paragraph and also assessed duty at the rate of 35 per cent ad valorem under the provisions of the countable cotton clauses, paragraphs 306 and 307 of said act, which provides a rate of duty on cotton cloth, determined according to its conditions, as bleached, dyed, colored, etc., the tests being, as referred to in said paragraph 313, description,
37 condition, weight and count of threads. Said paragraphs, however, contain a further proviso that on all cotton cloth exceeding a certain number of threads, etc., a further ad valorem duty shall be collected.

Counsel for the importers insists that inasmuch as paragraph 313 provides for a duty additional to that provided "for other cotton cloth of the same description, or condition, weight and count of threads," under paragraphs 306 and 307, but does not refer to the ad valorem proviso, there was no justification for the action of the collector in assessing the ad valorem duty under paragraphs 306 or 307.

Counsel for the Government contends that the words in paragraph 313, "of the same description or condition," are broad enough to include "value." There would be considerable force in this contention were it not for the fact that said words are followed by the words "weight and count of threads," while all reference to the ad valorem provision is omitted. The chief contention of counsel for the Government is that as the act of 1897 is intended as a protective tariff, the effect of the con-

struction contended for by the importers would be to nullify the intent of the law by permitting fancy goods to come in at a lower rate of duty than plain goods. The evidence on this point, however, is incomplete and unsatisfactory. It is practically conceded by counsel for the Government that in this specific case the fancy goods would pay a slightly higher rate of duty than the plain goods. Certain illustrative samples were introduced to show that in certain other cases fancy goods would pay a lower rate of duty than plain goods, but it does not appear that this would be true as to fancy goods generally.

The question is a doubtful one. If Congress intended that the ad valorem duty provided for in paragraphs 306 and 307 should be imposed upon these goods, it could have avoided all question by inserting
38 the word "value." It has not done this; and in these circumstances it would seem to be the duty of the court to resolve the doubt raised by reason of such omission in favor of the importer.

The decision of the Board of General Appraisers is reversed.

W. Wickham Smith, for the importers.

D. Frank Lloyd, asst. U. S. attorney, and Albert H. Washburn, counsel for the Treasury Department, of counsel for the United States.

(Endorsed:) Circuit Court of the United States for the Southern District of New York. George Riggs & Company vs. The United States (suit No. 3412). Opinion, Townsend, C. J. U. S. Circuit Court, Southern District of New York, filed May 27, 1904. John A. Shields, clerk.

39 At a stated term of the United States Circuit Court for the Southern District of New York, held in the United States Circuit Court rooms, in the Post-Office Building in the city of New York, on the 15th day of June, 1904.

Present: The Hon. William K. Townsend, U. S. Circuit Judge.

GEORGE RIGGS & COMPANY
vs.
THE UNITED STATES. } 3412.

The above cause coming on for hearing and determination before this court, on the application of the above-named importers, for a review of the questions of law and fact involved in the decision of the Board of United States General Appraisers herein, and on the return of the Board of General Appraisers of the record and evidence taken by them, with their certified statement of the facts involved therein, together with their decision thereon.

Now, after hearing D. Frank Lloyd, esq., assistant U. S. attorney, and Albert H. Washburn, of counsel for Treasury Dept., on behalf of the collector, for affirmance, and W. Wickham Smith, esq., counsel for said importers, for reversal, and on motion of Curie, Smith & Maxwell, attorneys for said importers, it is

Ordered, adjudged, and decreed that there was error in said proceedings before said Board of General Appraisers, and that their decision therein be, and the same is hereby, in all things reversed, and that said merchandise is dutiable at the specific rates per square yard pro-
40 vided in pars. 306 and 307, Sch. I, tariff act of July 24, 1897, and

in addition thereto two cents per square yard under paragraph 313 of the same schedule and act.

WM. K. TOWNSEND,
U. S. Circuit Judge.

Consented to as to form.

HENRY L. BURNETT,
U. S. Attorney,
Per LLOYD.

(Endorsed:) No. 3412. United States Circuit Court, Southern District of New York. George Riggs & Company vs. The United States. Judgment of reversal. Curie, Smith & Maxwell, attorneys for importers, 22 William street, N. Y. City. U. S. Circuit Court, Southern District of New York, filed Jun. 17, 1904. John A. Shields, clerk.

41 United States Circuit Court of Appeals for the Second Circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
vs.
GEORGE RIGGS & COMPANY, APPELLEES.
} "A" suit No. 3412.

To the United States Circuit Court of Appeals for the Second Circuit:

The Attorney-General of the United States hereby applies for the allowance of an appeal to the United States Circuit Court of Appeals for the Second Circuit, from the decision and judgment of the U. S. Circuit Court entered herein on the 17th day of June, 1904.

Dated, July 14th, 1904.

W. H. MOODY,
Attorney-General.
Per HENRY L. BURNETT,
U. S. Attorney.

The foregoing application is granted and appeal allowed.
Dated, New York, July 14th, 1904.

E. H. LACOMBE,
Judge of the U. S. Circuit Court of Appeals for the Second Circuit.

42 (Endorsed:) "A" suit No. 3412. U. S. Circuit Court of Appeals for the Second Circuit. The United States of America, appellant, vs. George Riggs & Co., appellees. Application for and allowance of appeal. Henry L. Burnett, U. S. attorney. To Curie, Smith & Maxwell, attorneys for appellees, 22 William street, N. Y. City. Due service of a copy of the within is hereby admitted. Dated, July 18th, 1904. Curie, Smith & Maxwell, attorneys for appellees. U. S. Circuit Court, Southern District of New York, filed Jul. 19, 1904. John A. Shields, clerk.

United States Circuit Court of Appeals for the Second Circuit.

THE UNITED STATES OF AMERICA, APPELLANT,
against
GEORGE RIGGS & CO., APPELLEES.

Specification of errors.

The United States hereby assigns error to the decision and judgment of the Circuit Court of the United States for the Southern District of New York herein, in the following particulars:

I. In that the said court reversed the decision of the Board of United States General Appraisers and the collector herein.

II. In that the said court held that the merchandise in said suit is not dutiable at the appropriate rates under the provisions of para-
43 graphs 306 and 307 of the tariff act of July 24th, 1897, and an additional duty of two cents per square yard thereon, under the provisions of paragraph 313 of said act, as assessed by the collector.

III. In that the said court sustained the protest of the importers herein.

IV. In that the said court did not affirm the decision of the collector and the Board of United States General Appraisers herein.

Dated New York, July 12th, 1904.

HENRY L. BURNETT,
In behalf of the United States, appellant,
Room 50, P. O. Building, New York City, New York.

(Endorsed:) U. S. Circuit Court of Appeals for the Second Circuit. The United States of America, appellant, versus George Riggs & Co., appellees. Specification of errors. Henry L. Burnett, United States attorney. U. S. Circuit Court, Southern District of New York, filed Jul. 13, 1904. John A. Shields, clerk.

44 UNITED STATES OF AMERICA, *ss:*

To GEORGE RIGGS & CO., *Importers:*

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Second Circuit, at the city of New York, on the 11th day of August, 1904, pursuant to an appeal on the part of the United States, filed in the clerk's office of the Circuit Court of the United States for the Southern District of New York, in a certain suit or proceeding entitled "The United States of America, appellant, vs. George Riggs & Co., appellees, 'A' No. 3412," to show cause, if any there be, why the decision of the U. S. Circuit Court, in the said appeal mentioned, should not be reversed, modified, or corrected, and speedy justice should not bo done in that behalf.

Given under my hand at the city of New York, in the Southern District of New York, on the 14th day of July, 1904.

E. H. LACOMBE,
Judge of the U. S. Circuit Court of Appeals for the Second Circuit.

HENRY L. BURNETT,
U. S. Attorney on behalf of the United States, appellant.

(Endorsed:) "A" suit No. 3412. U. S. Circuit Court of Appeals for the Second Circuit. The United States of America, appellant, vs. George Riggs & Co., appellees. Citation. Henry L. Burnett, U. S. attorney. Due service of a copy of the within citation is hereby admitted. Dated July 18th, 1904. Curie, Smith & Maxwell, attorneys for appellees. To Curie, Smith & Maxwell, esqs., attorneys for appellees, 22 William street, N. Y. City. U. S. Circuit Court, Southern District of New York, filed Jul. 19, 1904. John A. Shields, clerk.

45 UNITED STATES OF AMERICA,
Southern District of New York, ss.

I, John A. Shields, clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby certify that the foregoing pages, numbered from one to forty-five inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the cause entitled The United States of America, Appellant, against George Riggs & Co., appellees (No. 3412), as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 16th day of August, in the year of our Lord one thousand nine hundred and four, and of the Independence of the said United States the one hundred and twenty-ninth.

[SEAL] JOHN A. SHIELDS, *Clerk.*

46 United States Circuit Court of Appeals for the Second Circuit.

No. 134. October term, 1904.

Argued January 31, 1905. Decided March 3, 1905.

THE UNITED STATES, APPELLANT, *vs.* GEORGE RIGGS & COMPANY, APPELLEES. [3412] } Appeal from the Circuit Court of the United States for the Southern District of New York.

Before Judges Wallace, Lacombe and Coxe.

Appeal from the decision of the Circuit Court of the United States for the Southern District of New York, reversing a decision of the Board of United States General Appraisers which overruled the protest of the importers and sustained the action of the collector in assessing duty upon the merchandise in question, which consisted of figured cotton cloth, pursuant to the provisions of paragraphs 306, 307 and 313 of the tariff act of 1897.

The importers protested against the action of the collector, insisting that the "goods dutiable under paragraph 313 should pay only the specific rates therein provided, according to their value per square yard in addition to the specific rates provided in paragraphs 304–309 for cotton cloth of the same description or condition, weight and count of threads to the square inch. The ad valorem provisos of paragraphs 305–309 can not be applied to any goods assessed under paragraph 313, which

has an ad valorem classification of its own. The addition of the
47 specific rates imposed by paragraph 313 to the ad valorem rates of 30, 35, or 40 per cent. provided in paragraphs 305–309 is therefore unauthorized and illegal."

Paragraph 313 is as follows:

"Cotton cloth in which other than the ordinary warp and filling threads have been introduced in the process of weaving to form a figure, whether known as lappets or otherwise, and whether unbleached, bleached, dyed, colored, stained, painted, or printed, shall pay, in addition to the duty herein provided for other cotton cloth of the same description, or condition, weight, and count of threads to the square inch, one cent per square yard if valued at not more than seven cents per square yard, and two cents per square yard if valued at more than seven cents per square yard."

Paragraphs 306 and 307 provide for a specific duty upon the cotton cloth therein described, but at the end of each paragraph there is a proviso levying an ad valorem duty on such cloth if it exceeds a certain designated value per square yard.

Three of the items in controversy contain between 100 and 150 threads to the square inch, counting the warp and filling, and fall, therefore, under paragraph 306. The fourth item contains from 150 to 200 threads to the square inch, and falls under paragraph 307.

The opinion of the Board clearly states the facts as to the action of the collector and the contention of the importers, as follows:

"All the goods were assessed under the provisos to paragraphs 306 and 307 at 35 per centum ad valorem—the first and third items because they are colored and valued at over 12½ cents per square yard, the second because it was bleached and valued at over 11 cents per square yard, and the last one because it was bleached and valued at over 12 cents per square yard. There was also added a specific duty of 2 cents per square yard, as provided in paragraph 313.

48 "It is claimed by the importers that the provisos to paragraphs 306 and 307 are not to be considered in ascertaining the rate to which the additional duty is to be added, and, while it is conceded that the additional duty of 2 cents per square yard should be assessed, it is claimed that it should be added to the duty to be ascertained by classifying the goods under the body of the paragraph, the first three under paragraph 306 and the last under paragraph 307. It is further contended that the additional duty provided for by paragraph 313 can not be added to the duty provided for in the provisos to said paragraphs 306 and 307, because it is a specific duty, and the duty there provided for is an ad valorem duty."

The decision of the Circuit Court will be found reported in 131 Fed. Rep., 568.

COXE, Circuit Judge.

Paragraph 313 appears for the first time in the act of 1897 and we have little doubt that it was the purpose of Congress, after cotton cloths had been properly classified under paragraphs 306 and 307, to lay an additional duty per square yard upon such cloth as was figured; in other words, to place an extra duty upon the figure, so that figured cotton cloth

should pay a higher duty than the same cloth plain. But the legislative intent must be derived from the language employed, and unless it can be clearly ascertained from paragraph 313 that the collector was justified in assessing the merchandise under the provisos of the preceding paragraphs, the importers should succeed upon the principle that their money should not be taken from them upon a doubtful construction of the law.

It is the duty of Congress to make its meaning clear and if it fails to do so the citizen should not suffer.

When figured cotton cloth is imported it is the duty of the collector to turn to the paragraph of the law which specifically describes such cloth and proceed as there directed. This is paragraph 313. It
49 provides that figured cotton cloths shall pay, in addition to the duty provided elsewhere in the act "for cotton cloth of the same description, or condition, weight, and count of threads to the square inch, one cent per square yard," etc. With these instructions before him the collector proceeds to ascertain, first, the description or condition of the goods, whether bleached or unbleached, etc.; second, the weight, and, third, the count of threads. Having found these facts he turns to the appropriate preceding paragraph to ascertain what duty is imposed on such cloth and finds that it is a specific duty of so much per square yard. His course is now clear. Having obtained all the information from the preceding section which the law requires he returns to paragraph 313 and finds that he is now required for the first time to ascertain the value of the goods for the purpose of levying duty under that paragraph, namely, whether valued at more or less than seven cents per square yard.

Assume that the imported merchandise is figured cotton cloth, bleached, containing 125 threads to the square inch and weighing five square yards to the pound, if the collector has no other data regarding it he will inevitably levy a specific duty of three cents per square yard under paragraph 306. He can not levy an ad valorem duty under the proviso until he knows what the value is, and he can not know that unless the law permits him to know it. In short, paragraph 313 has given him all the criteria which he is to use in ascertaining the duty under paragraph 306, and they do not include the value of the goods. If this omission be a mistake Congress can cure it, the courts can not.

It is said that the words of paragraph 313 "other cotton cloth goods of the same description" are broad enough to include value. We think this contention would be entitled to weight if the sentence had stopped with the words quoted, but it is manifest that Congress was not stating a broad, general comparison, but was giving in minute detail the
50 precise points of similarity which were to be taken into consideration. The omission of value from these is significant and can not be ignored. If Congress had intended the construction urged by the appellant it would have required only the addition of the word "value" after the word "weight," and we are unable to say that the omission may not have arisen from a desire to avoid the imposition of two duties upon the same article based upon the ad valorem standard.

Having found that paragraph 313 does not permit the value of the goods to be considered in fixing the original duty, we are not concerned with the effect which this interpretation may have upon other merchandise not involved in the present controversy. As before stated, such

considerations are not for the courts. The question is difficult and perplexing, but for the reasons above stated we are of the opinion that the contention of the appellees is well founded.

Decision affirmed.

D. Frank Lloyd, assistant United States attorney, for the appellant.
W. Wickham Smith, for the appellees.

51 At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the court rooms in the Post-Office Building in the city of New York on the 13th day of March, one thousand nine hundred and five.

Present: Hon. William J. Wallace, Hon. E. Henry Lacombe, Hon. Alfred C. Coxe, circuit judges.

UNITED STATES, APPELLANT,
vs.
GEORGE RIGGS & COMPANY, APPELLEES.

Appeal from the Circuit Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the Circuit Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the decree of said Circuit Court be and it hereby is affirmed.

It is further ordered that a mandate issue to the said Circuit Court in accordance with this decree.

W. J. W.
E. H. L.
A. C. C.

52 (Endorsed:) United States Circuit Court of Appeals, Second Circuit. U. S. vs. Riggs & Co. Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 13, 1905. William Parkin, clerk.

53 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 52, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of United States against Geo. Riggs & Co., as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the Southern District of New York, in the Second Circuit, this 11th day of December, in the year of our Lord one thousand nine hundred and five, and of the Independence of the said United States the one hundred and thirtieth.

[SEAL.] WM. PARKIN, *Clerk.*

54 *To the honorable the Supreme Court of the United States, greeting:*

The record and all proceedings whereof mention is within made having been lately certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and hereby certified as a return to the writ of certiorari issued herein.

Dated New York, January 11th, 1906.

[SEAL.] WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

55 Supreme Court of the United States, October term, 1905.

THE UNITED STATES, PETITIONER,
vs.
GEORGE RIGGS & COMPANY. } No. 516.

Stipulation as to return.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record therein now on file in the office of the clerk shall be taken as the return of the clerk of the Circuit Court of Appeals for the Second Circuit to the writ of certiorari issued herein.

H. M. HOYT,
Solicitor-General.
W. WICKHAM SMITH,
Counsel for Respondents.

January 6, 1906.

(Endorsed:) U. S. vs. Riggs. Stipulation. United States Circuit Court of Appeals, Second Circuit. Filed Jan. 11, 1906. William Parkin, clerk.

56 UNITED STATES OF AMERICA, ss.

The President of the United States of America to the honorable the judges of the United States Circuit Court of Appeals for the Second Circuit, greeting:

Being informed that there is now pending before you a suit in which the United States is appellant and George Riggs & Company are appellees, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the Circuit Court of the United States for the Southern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme
57 Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the honorable Melville W. Fuller, Chief Justice of the United States, the fourth day of January, in the year of our Lord one thousand nine hundred and six.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

58 (Indorsed:) File No. 20018. Supreme Court of the United States. No. 516, October term, 1905. The United States vs. George Riggs & Co. Writ of certiorari. United States Circuit Court of Appeals, Second Circuit. Filed Jan. 11, 1906. William Parkin, clerk.

59 (Indorsed:) United States Circuit Court of Appeals, Second Circuit. United States v. Riggs & Co. Return to certiorari. Office of the clerk, Supreme Court, U. S. Received Jan. 13, 1906.

60 (Indorsed:) File No. 20018. Supreme Court U. S. October term, 1905. Term No. 516. The United States, petitioner, vs. George Riggs & Co. Writ of certiorari and return. Filed Jan'y 13, 1906.

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